1894 now Part II of the Appendix to the Bankruptcy Rules of 1897, and that "General Regulation" 1 printed at page 233 of the Volume of Rules is a governing provision for all costs in Bankruptcy proceedings and that the costs payable in such proceedings are to be allowed on the scale contained in the second column (i.e. lower scale) in the schudule to the rules and orders on costs under the Courts Ordinance 1878 made on the 22nd June 1887 and published in Garrard's revision of the Ordinances Vol. II Appendix p. 13 unless such costs are provided for in the earlier parts of the rules of 1894 (or Part II of the Appendix II to the rules of 1897). I would point out that General reg. 1 above referred to follows closely the similar regulation at page 790 of *Lee & Wace.*

The costs in Orders & Rules printed in the Appendix to Vol. II of Garrard's revision have long been out of date. Whether they were repealed earlier than 1907 I have not enquired but they certainly did not survive the Civil Procedure Code of that year which itself has been repealed and the scale of costs now corresponding to those in Garrard are to be found in Schedule C of the Rules of the Supreme Court 1934 made under the Courts Ordinance 1934 (Now Chapter 10 of the Laws of the Straits Settlements).

As the costs rules have always provided for a higher and a lower scale s. 5(e) of the Interpretation Ordinance (Chapter 2) applies and "General Regulation" 1 in Part II of the schedule of the Bankruptcy Rules must now be taken as directing that costs save as in the scale provided in Part II shall be allowed on the Lower scale contained in schedule C to the Rules of the Supreme Court 1934.

Whether this scale applies in the case of ordinary actions taken by the Official Assignee it is not necessary now to consider but reference may be made to *Watson* v. *Holliday*, 20 Ch. 780. I am dealing with proceedings which are purely proccedings in bankruptcy.

The Official Assignee is not liable personally for these costs (r. 187).

I therefore order the Official Assignee to pay to the appellant's solicitors the appellant's costs of this appeal taxed on the lower scale in schedule C to the Rules of the Supreme Court 1934, and that such taxed costs be paid, half from the joint estate of W. S. Bee & Company and half from the separate estate of Tay Kim Soon.

Order accordingly.

Solicitors for the applicant:—*Chan & Eber.*

[ORIGINAL BANKRUPTCY JURISDICTION]

McELWAINE, C.J.

March 9, 1938.

RE MANICKAM AMMAL (Widow).

[SINGAPORE BANKRUPTCY No. 20 of 1932]

Husband and Wife—Promissory Note signed by wife during coverture—Judgment thereon after death of husband—Form of judgment against married woman or widow—Separate property — Bankruptcy Notice—Non-compliance therewith not an "act of bankruptcy"—Bankruptcy Petition—Rescission of Receiving Order and Annulment of Adjudication Order—Married Women's Property Ordinance, sect. 4—Bankruptcy Ordinance, sects. 3 (1) (i), 90 (1), 104 and 117—Bankruptcy Rules 92, 99 seq.

Since the enactment in 1902 in this Colony* of the Married Women's Property Ordinance, which is based on the Married Women's Property Acts of 1882 and 1893 in England, a judgment recovered against a widow upon a Promissory Note signed, or contract entered into, by her during coverture cannot be in the ordinary form as though she were a *feme sole*, but in the form settled by the Court of Appeal in England in *Scott* v. *Morley*, (1887) 20 Q.B.D. 132.

Pelton v. *Harrison*, (1891) 2 Q.B. 422: *Softlaw* v. *Welch*, (1899) 2 Q.B. 419; *Barnett* v. *Howard* (1900), 2 Q.B. 75; and *Brown* v. *Dimbleby*, (1904) 1 K.B. 28, followed.

Such judgment not being against the widow personally but against her separate property, the judgment-creditor cannot, by reason of section 117, Bankruptcy Ordinance, issue a Bankruptcy Notice nor a Bankruptcy Petition against her, alleging as an "act of bankruptcy" her non-compliance with such notice. Consequently, Receiving and Adjudication Orders pronounced upon such Petition will be respectively rescinded and annulled.

Re Lynes, (1893) 2 Q.B. 113; *Re Hewett*, (1895) 1 Q.B. 328, followed.

The local rulings in *re Virginia Miles*, (1904) 8 S.S.L.R. 18 and *re Lim Quee Geok*, (1934) S.S.L.R. 331; 4 M.L.J.3 to the effect that a married woman must be shown to have separate property before a Receiving or Adjudication Order is made against her, apply equally to the case of a widow.

MOTION.

Motion by a widow for rescission of the Receiving Order, and annulment of the Adjudication Order, made against her on a money-lender's Petition the 12th February 1932.

The Applicant (widow of S. Rajagopal, who died in 1931) had signed, together with her husband and her brother-in-law, S. Vadiveloo on the 6th August 1930 a Promissory Note in favour of a money-lender, P. L. M. M. Meyappa Chitty, all the signatories promising jointly and severally to repay the sum of $180 by ten monthly instalments of $18 each, beginning the 6th Sept. 1930, with interest at the rate of 24 per cent. per annum from the date of default.

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* The references in the present Report to the Ordinances of the Colony are, for convenience, to the "Laws of the Straits Settlements, 1936 Edition," although, in fact, the 1926 Edition was in force when this bankruptcy began (Feb. 1932) *Ed. M.L.J.*

Upon the death of the husband, Meyappa Chitty issued a Summons in the District Court, Singapore, against the applicant and Vadiveloo on the 13th August 1931 for $144, alleged balance of principal and interest thereon. Judgment was entered in default of appearance against Vadiveloo on the 7th, and against the Applicant on the 23rd Sept., 1931 for $156.26.

Then at the judgment-creditor's request, on the 7th Jan. 1932, a Bankruptcy Notice was issued in the form (Form No. 5) prescribed by Bankruptcy Rule 92: and this Notice not having been complied with within a week of its service a Bankruptcy Petition (in Form 9, prescribed by Rule No. 99) was issued against the applicant and served upon her on the 19th January 1932, alleging as an "act of bankruptcy" such non-compliance, under sect. 3 (1) (i) of the Bankruptcy Ordinance. On this Petition, Receiving and Adjudication Orders were made against the applicant on the 12th February 1932. Her Public Examination was held and concluded on the 13th May 1932. No assets had been collected by the Official Assignee, nor any dividend distributed.

On the 31st Dec. 1937, the bankrupt filed her present application for (a) rescission and annulment of the Orders of the 12th February 1932 under sects. 99 and 104, Bankruptcy Ordinance; or (b) in the alternative, for her discharge from bankruptcy, under sect. 33. The first application was founded on two grounds, viz. (i) that the District Court Judgment of the 23rd Sept. 1931 was, in substance, a judgment in respect of the applicant's separate property only, if any, under sect. 4 (3) of the Married Women's Property Ordinance, and not against her personally, and her non-compliance with the Bankruptcy Notice of the 7th January 1932 did not therefore constitute an "act of bankruptcy" on which a Bankruptcy Petition could be based, or Receiving or Adjudication Orders pronounced against her: (ii) that the applicant was not, in fact, in the year 1930 or 1931, or since, or now, actually possessed of any separate property so as to justify, under sect. 117, Bankruptcy Ordinance, any bankruptcy proceedings against her.

In her affidavit of the 31st Dec. 1937 in support of her combined application, the applicant deposed *inter alia* (paragraphs 5 and 6) as follows:

> "5. I have no occupation, and have not, either at the time of the signing of the said Note (in 1930) or since, ever had any separate property or income. I have an expectant interest in the estate of my father, N. Kathirayson, who died on the 13th day of April 1920, and Probate of whose Will was on the 10th May 1920 granted by this Honourable Court to the executors and trustees named therein. Under the terms of the said Will, the trustees are to distribute the estate when the youngest of the testator's children attains the age of 21 years,—which is about the year 1940. My mother gives me a monthly allowance of $10 from the money she receives from the said Trustees."
>
> "6. I am informed and verily believe that the Official Assignee has not succeeded in collecting any money to the credit of my estate or distributing any dividend, and my bankruptcy exposes me to ridicule and indignity, which I pray this Honourable Court to put an end to."

The course of legislation in England and in this Colony relative to married women's property and bankruptcy since 1882* is shown by the following comparative table of the relevant provisions, arranged in chronological order, which was put in at the hearing by consent.

ENGLAND.	STRAITS SETTLEMENTS.
1882.	
Married Women's Property Act 1882 (45 & 46 Vict.c.75) sect.1.	
(1) A married woman shall, in accordance with the provisions of this Act be capable of acquiring, holding, and disposing by will or otherwise of any *real* or *personal* property as her separate property in the same manner as if she were a *feme sole* without the intervention of any trustee.	
(2)—A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract, and of suing and being sued, either in contract or in tort, or otherwise, in all	

* There was no provision, in the local Bankruptcy Ordinance No. XXI of 1870 (vide *Harwood's* Edition of the Ordinances, Vol. I. pp. 208 *seq.*), relative to the bankruptcy of married women.—*Ed. M.L.J.*

respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise;

(3) Every contract entered into by a married woman shall be deemed to be a contract entered into by her with respect to and to bind her separate property unless the contrary be shown.

(4) Every contract entered into by a m.w. with respect to and to bind her separate property shall bind not only the separate property which she is possessed of or entitled to at the date of the contract, but also all separate property which she may thereafter acquire.

(5) *Every* married woman carrying on a trade separately from her husband shall, in respect of her separate property, be subject to *the bankruptcy laws* in the same way as if she were a *feme sole.*

1883.

Bankruptcy Act. 1883 (46 & 47 Vict.c.52), Sect. 152.

Nothing in this Act shall affect the provisions of the M.W.P.Act 1882.

1888.

Bcy. Ordnce. 1888, sect. 111 (now 117).—*A* married woman.....shall, in respect of her separate property (*if any*) be subject to *this Ordinance* in the same way as if she were *unmarried.*

1893.

Married Women's Property Act, 1893 (56 & 57 Vict.c.63) sect. 1, (repeating sect. 1 (3) and (4) of Act of 1882 above).—

Every contract hereafter entered into by a married woman otherwise than as agent—

(a) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract:

(b) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to and

(c) shall also be enforceable by process of law against all property which she may thereafter while discovert be possessed of or entitled to.

Provided that nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract any separate property, which at that time or thereafter she is restrained from anticipating.

Sect. 3.—Sect. 24 of the Wills Act, 1837, shall apply to the Will of a m. w. made during coverture whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not be re-executed or re-published after the death of her husband.

1902.

Married Women's Property, Ord. XI. of 1902.

Sect. 1 (1) A married woman shall in accordance with the provisions of this Ordinance be capable of acquiring holding and disposing by will or otherwise of any *moveable* or *immoveable* property as her separate property in the same manner as if she were a *feme sole* without the intervention of any trustee.

(2)—Section 20 of Indian Act XXV of 1838 shall apply to the Will of a married woman made during coverture whether she is or is not possessed of or entitled to any separate property at the time of making it and such will shall not require to be re-executed or republished after the death of her husband.

(3) A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract and of suing and being sued either in contract or in tort or otherwise in all respects as if she were a *feme sole* and her husband need not be joined with her as plaintiff or defendant or be made a party to any action or other legal proceeding brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise.

(4) Every contract entered into by a married woman otherwise than as agent

(a) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract;

(b) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to and

(c) shall also be enforceable by process of law against all property which she may thereafter while discovert be possessed of or entitled to

Provided that nothing in this sub-section shall render available to satisfy any liability or obliga-

tion arising out of such contract any separate property which at that time or thereafter she is restrained from anticipating.

* (5) Every married woman carrying on a trade separately from her husband shall in respect of her separate property be subject to the bankruptcy laws in the same way as if she were a *feme sole.*

* Section 1 of the Married Women's Property Ordinance 1902 has, in the Revised Editions (of 1920, 1926, and 1936) of the Laws of the Straits Settlements, been renumbered section 4, but subsection (5) thereof has, since 1920, been entirely repealed, leaving only what is now section 117 of the Bankruptcy Ordinance in force.—*Ed. M.L.J.*

The Original Memo. of Judgment issued by the District Court to Meyappa Chitty was not available, as he was not present or represented at the hearing of the Motion: it was assumed that it was probably in the customary tabulated form, with the various items comprising the judgment-debt arranged in two columns. An Office-copy of the entry in the District Court Cause-book was, however, produced on behalf of the bankrupt: it gave, besides the names of the parties, the total amount ($156.26c.) of the judgment-debt.

de Mello, for bankrupt.—Firstly, the bankrupt's Promissory Note of the 6th August 1930 is a contract made by her during coverture, within the meaning of sect. 4 of the Married Women's Property Ordinance, and binds only her separate property, and not her personally, quite irrespective of the customary District Court tabulated form of judgment. The correct form of judgment against a married woman was settled by the Court of Appeal in England in *Scott* v. *Morley* (1887) 20 Q.B.D. 132, and needs a little retouching in the case of a widow. Our local Ordinance is a replica of the Married Women's Property Acts of 1882 and 1893, with the exception of sect. 1 (5) of the former Act, which has disappeared from the Ordinance since the Revised Edition of the Ordinances 1920. The non-personal character of the judgment is shown by the fact that no judgment-debtor Summons can issue against a married woman: see *Scott* vs. *Morley, (supra) per* Lord Esher, M. R. at p.126. Removal of the coverture by the death of the husband or by divorce does not make any difference in this respect: *Beckett* v. *Tasker,* (1887) 19 Q.B.D. 7: *Pelton* vs. *Harrison,* (1891) 2 Q.B.422. C.A. *Softlaw* v. *Welch,* (1899) 2 Q.B. 419 C.A., *Barnett* v. *Howard,* (1900) 2 Q.B. 784; *Brown* v. *Dimbleby,* (1904) 1 K.B. 28, C.A.

Secondly, our sect.117 here of the Bankruptcy Ordinance was borrowed from sect.1 (5) of the Married Women's Property Act, 1882, and has the same effect as Sect. 152 of the Act of England, although sect. 1 (5) of the Married Women's Property Ordinance, 1902, has as already stated, disappeared from our Ordinances since 1920. The English rulings (*re Lynes* 1892, 2 Q.B. 112; *re Hewett,* 1895, 1 Q.B. 328) therefore, which decided that a judgment in the *Scott* v. *Morley* form does not entitle the judgment-creditor to issue a Bankruptcy Notice, are applicable here. Non-compliance with such Notice if issued, is not, accordingly, an "act of bankruptcy," on which a Bankruptcy Petition can be based, or Receiving or Adjudication Orders can be made.

Thirdly, sect. 117 of the Bankruptcy Ordinance expressly declares that a married woman can only be made bankrupt in respect of her separate property. Such separate property must be shown to exist; see the local rulings in *re Virginia Miles* (1904) 8 S.S.L.R. 18; *re Lim Quee Geok,* (1934) S.S.L.R. 331; 4 M.L.J. 3; and *re G. L. Hogan** (Singapore Bankruptcy No. 737 of 1931). In default of such separate property, she is not amenable to the Bankruptcy Ordinance. In the present case, the bankrupt's statement in her affidavit that she has no separate property, and has not since 1930 had any, is not contradicted, and is even corroborated by the Official Assignee's Report, which states that he has not succeeded in collecting any assets or distributing any dividend.

Ambrose, Asst. Official Assignee.—The definition of "property" in sect. 2 of the Bankruptcy Ordinance, embraces "every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property," and covers property *in futuro,* such as is alleged in the present case.

Cur. Ad. Vult.

* Unreported: see, however, Annual Report of the Bankruptcy Department. Straits Settlements, for 1932, p.4.—*Ed. M.L.J.*

McELWAINE, C.J.—This is an application for the rescinding and annulling of Receiving and Adjudication Orders made against Manickam Ammal (widow) on 12th February 1932, and, alternatively, for her discharge.

The first application was not opposed before me. The alternative application will be opposed if I decide the first adversely to the applicant.

The grounds on which it is sought to set aside the Receiving and Adjudication Orders are, shortly, that the Bankruptcy Notice and Petition were based on a judgment dated the 23rd September 1931 which was a judgment against the bankrupt's separate property, if any, and not against her personally, and that, therefore, the bankruptcy proceedings were not validly founded, and that the bankrupt was not in 1931 and 1932 or since, or now, actually possessed of any separate property. As no alteration has been made in any material section of the Bankruptcy Ordinance or of the Married Women's Property Ordinance since the date of the Petition for the Receiving and Adjudication Orders, I shall refer to these Ordinances as they are in the 1936 Edition of the "Laws of the Straits Settlements."

According to the Official Assignee's Report, the bankrupt's assets consist of a one-sixth share in the estate of her late father, which is not due to be distributed until the youngest of his children attains the age of twenty one years, which will be in or about 1940.

It appears from the affidavit of the bankrupt sworn on 31st December 1937 that the judgment on which the Bankruptcy Notice and Petition were based was in respect of a promissory note made in August 1930 by the bankrupt, her husband, and her brother-in-law, S. Vadiveloo. Her husband died in 1931. She swore that she has no occupation "and had not, either at the time of signing the said note (in 1930) or since, ever had any separate property or income. I have an expectant interest in the estate of my father," which is to be distributed in about 1940.

By Section 4 (3) of the Married Women's Property Ordinance (Chapter 55), a married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property on any contract. By subsection (4) of the same section, every contract entered into by a married woman otherwise than as agent shall be deemed to be a contract entered into by her with respect to and to bind her separate property, whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract.

Section 117 of the Bankruptcy Ordinance (Chapter 45) enacts that "a married woman shall, in respect of her separate property, if any, be subject to this Ordinance in the same way as if she were unmarried."

The bankrupt was a married woman at the date on which she contracted the debt in respect of which judgment was recovered against her after she had become a widow.

In *In re Lim Quee Geok* (m.w.), 1934, S.S.L.R., 331; 4 M.L.J., 3, Murison, C.J. held that a married woman could not be made bankrupt unless it were proved that she had some assets.

The same rule applies to a *widow* where the source of her alleged bankruptcy is a contract made by her during coverture.

The judgment against a married woman in this Colony ought to be in the form prescribed in *Scott* v. *Morley*, 20 Q.B.D., at 132. That, in short, is that "the plaintiff should recover $ against the defendant (married woman), such sum to be recovered out of her separate property, as hereinafter mentioned, *and not otherwise.*" Such a judgment debtor cannot be made bankrupt by means of a Bankruptcy Notice; *In re Lynes, Ex parte M. Lester & Company*, (1893) 2 Q.B., 113. Nor can she, *after* the death of her husband, be made bankrupt on a Bankruptcy Notice based on a judgment obtained against her *during* the lifetime of her husband; *In re Hewett, Ex parte Levene*, (1895) 1 Q.B., 328.

The liability of a married woman on a contract made during her coverture is not increased by her becoming a widow.

The contract itself together with section 4 (3) (4) of the Married Women's Property Ordinance set out the extent of her liability; so a judgment obtained during widowhood on a contract made during coverture is still a *Scott* v. *Morley* judgment, recoverable out of her separate property, and not otherwise; *Pelton Brothers* v. *Harrison*, (1891) 2 Q.B., 422. The test is what separate property had she during coverture which was what I might call the security for the debt? See *Barnett* v. *Howard*, (1900) 2 Q.B., 784, where a judgment obtained after divorce on a contract made during coverture was held, by virtue of what is section 4 (5) of the Married Women's Property Ordinance, not to attach to property acquired after coverture. "If at the time of entering into the contract or at any time thereafter she has separate property which she is restrained from anticipating, that property cannot be made available to satisfy any liability or obligation arising out of such contract." See too *Brown* v. *Dimbleby*, (1904) 1 K.B. 28, where Collins, M. R., at page 33, quotes from the judgment of Vaughan Williams, L. J. in *Softlaw* v. *Welch*, (1899) 2 Q.B., 419—"I think it clear from the latter part of the judgment that Kay L.J. meant to decide the case (*Pelton* v. *Harrison*) on

principle, and not on the form of the judgment. He seems to me to put it quite plainly that the Married Women's Property Act 1882 did not intend to enable a married woman, by a contract entered into by her during coverture, to incur any liability except in respect of and to the extent of her separate property held by her during coverture without restraint on anticipation, or, as it has been called, her free separate property, and that the Act did not intend to make liable on such a contract, property acquired after the death of her husband, nor any property though separate property, as to which during coverture she was restrained from anticipating."

No question of restraint from anticipation arises in the case before me, but the cases to which I have referred shew that it is only separate property that is liable. Separate property does not mean property acquired after coverture, and property acquired after the death of the husband cannot be made liable to satisfy a contract made during the marriage.

For a local case where there was separate estate, see *In re Virginia Eleanor Miles*, 8 S.S. L.R., 18.

The bankrupt, Manickam Ammal, had no separate property during her coverture, and there was no property out of which the judgment could be satisfied.

The question then arises—Can a widow be made bankrupt in respect of non-satisfaction of a judgment obtained on a contract made during coverture when she had, during coverture, no separate property? In my opinion, she cannot. The principal purpose of bankruptcy proceedings is the realisation and distribution of assets, and if, during coverture, she had no separate property, then there can be no assets to realise or distribute. She was not a trader. She could not have been made bankrupt by a Bankruptcy Notice during her coverture; *Re Lim Quee Geok* (*supra*); and the death of her husband puts her in no worse position.

The judgment against her was a judgment *in rem*. Bankruptcy proceedings are not merely *in rem*, but also *in personam*. There was no *res* and no judgment *in personam*, and there must be either a *res* or a judgment *in personam* before a woman who was married at the date of the contract can be adjudicated Bankrupt for non-compliance with a Bankruptcy Notice.

I, therefore, rescind and annul the Receiving and Adjudication Orders made against her.

Order accordingly.

Solicitor for the Applicant—*A. de Mello.*